

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

|  |   |                               |
|--|---|-------------------------------|
| <b>WAYNE D. NASH, on behalf of</b>               | ) |                               |
| <b>himself and all others similarly situated</b> | ) |                               |
|  | ) |                               |
| <b>PLAINTIFF</b>                                 | ) |                               |
|  | ) |                               |
| <b>vs.</b>                                       | ) | <b>Civil Action No.:</b>      |
|  | ) | <b>2:04-cv-369-FLM-29-DNF</b> |
|  | ) |                               |
| <b>LEE MEMORIAL HEALTH SYSTEM,</b>               | ) |                               |
| <b>and AMERICAN HOSPITAL ASSOCIATION,</b>        | ) |                               |
|  | ) |                               |
| <b>DEFENDANTS.</b>                               | ) |                               |

**AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW, the Plaintiff **WAYNE D. NASH**, by and through the undersigned counsel of record, and files this Amended Class Action Complaint, adding as a Defendant, American Hospital Association (hereinafter referred to as AHA). The Plaintiff is seeking monetary damages, injunctive and other equitable relief against the Defendants **LEE MEMORIAL HEALTH SYSTEM** (hereinafter referred to as “LMHS”) and AHA; and in support thereof would show unto the Court the following to-wit:

**I.  
INTRODUCTION**

Lee Memorial Health System is one of the largest health care systems in South Florida, operating approximately ten (10) hospitals and outpatient facilities in Southwest Florida, including Lee Memorial Hospital in Cape Coral, Florida. Defendant LMHS is a not-for-profit, 501(c) charitable, tax-exempt corporation that own and manage hospitals and health-related facilities in the state of Florida. LMHS has operated free from federal and state taxes because it promised the

government that it would operate as a charity provider of health care for the uninsured and that it would not engage in business “directly or indirectly, for the benefit of private interests.” In reality, LMHS does just the opposite: it charges uninsured patients significantly more than those who have insurance, generally pursuing the poor or uninsured relentlessly by aggressive and humiliating collection techniques; and through either “connected” board members and/or physicians whose for-profit businesses are favored and subsidized by the “tax-free” organization, is rampantly violating the federal and state prohibition against profiteering by “private interests.”

LMHS and its confederates who employ the same business model have thereby amassed and hoarded billions of dollars in cash and marketable securities, which otherwise should be available to provide charity care to the uninsured who were contemplated by the tax exemption. Moreover, enormous property and revenues have been insulated from taxation, the effect of which has bestowed upon this Defendant and its confederates greater liquidity than that possessed by most state and local governments.

The American Hospital Association is the national trade association for the nonprofit hospital industry, and serves as the representative for Defendant LMHS. The American Hospital Association has conspired with, and aids and abets, LMHS and its other nonprofit hospital members in carrying out their unfair, discriminatory, unconscionable and oppressive business practices.

This Complaint asks the Court to certify a Class of the intended beneficiaries of Defendant LMHS’s commitment to the government, more fully defined below, and to require it to honor the commitments for which it received its unique freedom from taxation.

**II.**  
**PARTIES**

1. Plaintiff Wayne D. Nash is, and was at all times relevant hereto, an adult resident citizen of Fort Myers, Florida.

2. Defendant Lee Memorial Health System, is a Florida not-for-profit corporation with its principal place of business located at 636 Del Prado Boulevard, Cape Coral, Florida. LMHS owns and operates approximate ten (10) hospitals and outpatient facilities in Florida, including Lee Memorial Hospital in Cape Coral, Florida.

3. American Hospital Association is an Illinois not-for-profit corporation with its headquarters at One North Franklin, Chicago, Illinois. AHA is the national trade association for the nonprofit hospital industry, and serves as the representative for Defendant LMHS and its nonprofit hospital members.

**III.**  
**JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this controversy pursuant to 28 U.S.C. §1331 and 1367, because Plaintiff's claims arise out of a federal contract between Defendant LMHS and the United States Government in which the Defendant agreed to provide mutually affordable medical care to their uninsured patients in exchange for a tax exempt status under 26 U.S.C. §501(c)(3). This Court also has subject matter jurisdiction of this controversy under 42 U.S.C. §1395 dd because Defendant LMHS conditioned providing emergency room medical care to the Plaintiff and the Class on their ability to pay and on financial guarantees from the Plaintiff and the Class. This Court further has subject matter jurisdiction of this controversy under 28 U.S.C.

§1340 because Plaintiff's claims arise out of Defendant's duties and obligations under 26 U.S.C. §501(c)(3).

5. Venue in this district is proper pursuant to 28 U.S.C. §1391(b).

#### **IV.** **FACTS**

6. Defendant LMHS represents itself as Florida based, tax exempt, charitable, nonprofit hospital system. LMHS is one of the largest health care systems in South Florida operating 4 hospitals and 6 outpatient medical facilities. LMHS was formed in 1916 in Lee County, Florida and operates a number of hospitals in the Southwest Florida area including Lee Memorial Hospital, The Children's Hospital of Southwest Florida, Cape Coral Hospital, and HealthPark Medical Center. Defendant LMHS is one of the most financially successful hospital systems in the State of Florida with total revenue of \$1.1 billion for 2002. LMHS purports to provide quality health care regardless of ability pay and represents that it performed \$30.6 million in charity care for 2002.<sup>1</sup>

7. Defendant LMHS entered into express and/or implied Agreements with the United States Government and the State of Florida to provide mutually affordable medical care to all of its patients in return for substantial tax exemptions. An express and/or implied contractual relationship was thereby created between Defendant LMHS and the United States Government and the State of Florida to accomplish such purpose. Defendant's uninsured and medically indigent patients during the period between July 7, 1994 and July 7, 2004 were the express and/or implied intended third party beneficiaries of such Agreements.

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<sup>1</sup>This is less than 3% of the total revenue for LMHS.

8. Defendant LMHS receives a federal income tax exemption as a purported “charitable” institution under 26 U.S.C. §501(c)(3). Under §501(c)(3), Defendant LMHS is required to operate “exclusively” in furtherance of a charitable purpose, with no part of its operations attributable directly or indirectly to any noncharitable commercial purpose and with no part of their earnings inuring to the benefit of any private individual or entity. By accepting this favorable tax exemption, Defendant LMHS explicitly and/or implicitly agreed: to operate exclusively for charitable purposes; to provide an emergency room open to all of their uninsured patients without regard to their ability to pay for such care; to provide mutually affordable medical care to all of their uninsured patients; not to charge their uninsured patients the highest and full undiscounted cost for medical care; not to charge their uninsured patients a higher rate for medical care than its insured patients; to use their net assets and revenues to provide mutually affordable medical care to their uninsured patients; and not to pursue outstanding medical debt from their uninsured patients through humiliating collection efforts, lawsuits, liens and garnishments.

9. Defendant LMHS also receives state and local income, property and sales tax exemptions from the State of Florida under Fla. Stat.. §§ 196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3. Under § 199.183 in order for a nonprofit hospital to be exempt from taxation it must provide charitable services, a reasonable percentage of which shall be without cost to those unable to pay. Under § 196.192 a nonprofit hospital devoted to providing charitable care is exempt from ad valorem taxes. By accepting these favorable state and local tax exemptions, Defendant explicitly and/or implicitly agreed: to operate exclusively for charitable purposes; to provide mutually affordable medical care to all of its uninsured patients; not to charge its uninsured patients the highest and full undiscounted cost of medical care; not to charge its uninsured patients a higher rate

for medical care than its insured patients; to use its net assets and revenues to provide mutually affordable medical care to its uninsured patients; and not to pursue outstanding medical debt from its uninsured patients through humiliating collection efforts, lawsuits, liens and garnishments.

10. Despite its favorable tax exempt status and its substantial net revenues and asset reserves, Defendant LMHS has breached its Agreements with the United States Government, and the State of Florida by failing to provide emergency room medical care to its uninsured patients without regard to their ability to pay for such care; charging its uninsured patients the highest and full undiscounted cost for medical care at grossly inflated rates from the actual cost of providing such services; allowing noncharitable for-profit physician groups and service providers to derive profit from its tax exempt hospitals; by engaging in aggressive efforts to collect such medical debt from its uninsured patients through abusive, harassing, and humiliating collection lawsuits, liens, and garnishments; and upon information and belief providing discounted medical care to their Board of Directors and entities connected to its Board of Directors. Defendant's uninsured patients have therefore not received the benefit of the Agreements between the Defendant and the United States Government and the State of Florida. These uninsured patients primarily consist of the working class who do not qualify for Medicaid or charity care but cannot afford private health insurance and/or cannot obtain health insurance through their employers.

11. Defendant LMHS sets its charges for medical services at highly inflated rates that bear no connection to the actual cost of providing the service. While Defendant LMHS gives private insurance companies and governmental third party payors like Medicare and Medicaid large discounts off this gross or "sticker price," all of its uninsured patients are charged 100% of the full sticker price, which can be as large as twice as much charged to the insured for the same service.

Defendant LMHS realize substantial revenues from this discriminatory charging practice. Defendant LMHS also realizes the highest profit per discharge on its uninsured patients who pay such grossly inflated prices.

12. Despite sizeable net revenues and its asset reserves, Defendant LMHS provide little to no charity care to its uninsured patients. Defendant's level of charity care constitutes only a small amount of its gross charges. Defendant LMHS has never provided an amount of uncompensated care equal to its market share.

13. In addition, LMHS uses Enron-style accounting tricks to grossly distort the small amount of charity care it does provide to uninsured patients. Defendant LMHS reports this amount of charity care as the amount of gross charges-which are grossly inflated-rather than the actual cost of providing the service. LMHS further exaggerates the amount of charity care that it does by simply referring to all bad-debt writes offs as charity care.

14. Before Defendant LMHS admit any patient, including its uninsured patients, into its hospitals and/or emergency rooms for medical care, it require patients to sign a form contract promising to pay them in full for unspecified and undocumented charges for medical care that are set by Defendant LMHS in its sole discretion.

15. Not only does Defendant LMHS charge its uninsured patients the highest rates for medical care, which they cannot afford to pay, it has also engaged in the uniform pattern and practice of aggressively pursuing such debt through abusive, humiliating, and harassing collection efforts, such as collection lawsuits, liens, and garnishments. Such lawsuits have driven many of Defendant LMHS's patients to bankruptcy and/or financial ruin.

16. Upon information and belief, while Defendant LMHS charges its uninsured patients the full undiscounted cost for medical care, it provides substantial discounts off the gross charges to its Board of Directors and entities owned, controlled or connected to its Board of Directors. These discounts are in direct violation of Defendant LMHS' obligations under 26 U.S.C. § 501(c)(3); Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3.

17. Defendant LMHS also allows numerous outside for-profit physician groups and service providers to use its tax-exempt hospitals to derive a profit. These for-profit physician groups and service providers practice in Defendant's taxpayer subsidized hospitals and then bill patients for work done at these tax-exempt hospitals. These for-profit physician groups and service providers are non-charitable entities which do not have a charitable mission or purpose. By allowing noncharitable for-profit entities with no charitable mission to derive a profit from its charitable tax-exempt hospitals, Defendant LMHS has not operated actually and exclusively for charitable purposes in violation of its obligations under 26 U.S.C. §501(c)(3), and Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3.

18. The Defendant, American Hospital Association ("AMA"), is the national trade association for the nonprofit hospital industry, and serves as the representative for Defendant LMHS and its nonprofit hospital members. According to its website, the AHA "ensures that members' perspectives and needs are heard and addressed in national health policy development, legislative and regulatory debates, and judicial matters."

19. AHA, through internal memos called "white papers" and other publications, provides

substantial assistance and guidance to LMHS and the nonprofit hospital industry on its billing and practices for uninsured patients, including publications such as, “Seven Strategies to Improve Your Bottom Line.” In these publications, the AHA encourages LMHS and its nonprofit hospital members to inflate its chargemaster prices, which only LMHS’ uninsured patients are charged. These inflated chargemaster prices have the intended effect of increasing LMHS’ outlier payment reimbursements under the Disproportionate Share Hospital (DSH) and Medicare reimbursement programs.

20. On December 17, 2003, the AHA sent out a “white paper” entitled “Federal Regulations Hamper Hospitals’ Efforts to Assist Patients of Limited Means” to LMHS and its member nonprofit hospitals, which falsely advised such hospitals that the Medicare laws and regulations prevented them from offering discounts to uninsured patients and required them to aggressively collect medical debt from the uninsured through collection lawsuits, liens, and garnishments.

21. The AHA actively conceals from, and misrepresents to, the government and regulatory agencies the amount of charity care provided by LMHS and its nonprofit hospitals to the uninsured. According to a June 21, 2004 article in Modern Healthcare entitled “Well Kept Secret,” “the AHA collects charity care data [from its members] in its annual hospital survey but does not report the total. Instead, it reports uncompensated care which includes bad debt as well as charity care.”

22. The AHA also falsely justifies to the public and governmental entities the reasoning for the outrageous billing and collection practices employed by LMHS and its nonprofit hospital members. In a December 16, 2003 letter to the United States Department of Health and Human

Services Secretary Tommy Thompson, the AHA, while admitting that LMHS and its nonprofit hospital members charge its uninsured patients the full price for medical care, falsely represented to the Secretary that LMHS and its member nonprofit hospitals were required by the federal Medicare regulations to charge and aggressively collect such grossly inflated medical expenses.

23. On February 19, 2004, Secretary Thompson, as the ultimate governmental authority on the applicable Medicare regulations, exposed the falsity of the AHA's prior advice and representations, stating that the Medicare regulations have never required nonprofit hospitals to charge its uninsured patients the highest price for medical care nor prevented such hospitals from offering discounts to its uninsured patients. Moreover, on June 24, 2004, in testimony before the House of Representatives Energy and Commerce Subcommittee on Oversight and Investigations, the Director of the Center for Medicare and Medicaid Services testified that Medicare billing requirements did not prevent discounting medical care to uninsured patients and did not require aggressive collection efforts toward the uninsured. Similar testimony was provided by the Chief Counsel of the Office of Inspector General of the Department of Health and Human Services, who testified that the federal regulations were clear and that there was no justification for interpreting such regulations as preventing discounts to the uninsured.

## **V. PLAINTIFF**

24. Plaintiff Wayne D. Nash is, and was at all times relevant hereto, a resident citizen of Fort Myers, Florida.

25. On or about April 1, 2001 Plaintiff sought emergency medical treatment at Lee Memorial Hospital in Cape Coral, Florida after shattering his leg in a boating accident. Even though

Plaintiff's leg was broken in five places, Lee Memorial Hospital did not admit him for needed surgery after they learned he had no health insurance. Hospital personnel wrapped his shattered leg in an ace bandage and sent him home because an operating room would not be available for thirty-six (36) hours. After spending thirty-six hours in excruciating pain Plaintiff went back to Lee Memorial for surgery. However, officials at Lee Memorial did not want to admit Plaintiff unless he paid a \$4,000 deposit. Unable to pay this, Lee Memorial officials finally relented and performed the necessary surgery, which was successful. For his surgery at Lee Memorial Hospital Plaintiff was charged \$15,033.60, which is almost three (3) times what an insurance company would typically pay for the same surgery.

26. Lee Memorial officials began interrogating and harassing Plaintiff about his hospital bill immediately after his surgery interrogating Plaintiff about what money and assets he had. Despite the fact that the surgeon that performed Plaintiff's surgery reduced his surgical fees to an amount close to what insurance companies would pay for the surgery the Defendant refused to do the same. The Defendant stated that Plaintiff was not "eligible" for any type of financial assistance or charity care and even refused to reduce his bill to the same rate as insurance companies or Medicare would pay. Instead, Defendant sought to force Plaintiff to pay almost three times what insurance companies would pay and approximately four times the actual cost of the medical care.

27. Even though Plaintiff attempted to contact the Defendant on numerous occasions to negotiate a fair and reasonable payment, the Defendant started harassing Plaintiff with collection phone calls.

**VI.**  
**CLASS ACTION ALLEGATIONS**

28. Plaintiff brings this class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) on behalf of a Class consisting of all persons who received any form of healthcare treatment at any LMHS hospital from July 7, 1994 through the date of commencement of class notice, and who were uninsured at the time of treatment.

29. Plaintiff Wayne D. Nash is a member of the Class he seeks to represent.

30. The Class consists of thousands of individuals and therefore is so numerous that joinder is impracticable.

31. Plaintiff's claims are typical of the claims of the Class because he and all of the Class sustained damages as a result of Defendant's unfair and discriminatory charging and/or collection practices seeking the full undiscounted cost of medical care.

32. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including:

- (a) whether Defendant LMHS entered into express and/or implied Agreements with the United States Government and the State of Florida that in return for substantial tax exemptions, it would: operate exclusively for charitable purposes; provide emergency room medical care to the Plaintiff and the Class without regard to their ability to pay for such medical care; provide mutually affordable medical care to the Plaintiff and the Class; and not to seek to collect outstanding medical debt from the Plaintiff and the Class through aggressive, abusive, and humiliating collection practices;

- (b) whether Defendant LMHS breached said Agreements with the U.S. Government, and/or State of Florida by: failing to operate exclusively for charitable purposes; failing to provide emergency room medical care to the Plaintiff and the Class without regard to their ability to pay for such medical care; failing to provide mutually affordable medical care to the Plaintiff and the Class; and by seeking to collect outstanding medical debt from the Plaintiff and the Class through aggressive, abusive, and humiliating collection practices;
- (c) whether the Plaintiff and the Class are express and/or implied intended third party beneficiaries to said Agreements between Defendant LMHS and the United States Government, and the State of Florida;
- (d) whether Defendant LMHS charged the Plaintiff and the Class the full undiscounted cost of medical care in violation of their charitable, nonprofit, tax exempt status;
- (e) whether Defendant LMHS charged the Plaintiff and the Class higher amounts for medical care than its insured patients in violation of their charitable, nonprofit, tax exempt status;
- (f) whether Defendant LMHS profited by charging the Plaintiff and the Class the highest rates for medical care;
- (g) whether Defendant LMHS charged the Plaintiff and the Class unreasonable charges for medical care;

- (h) whether Defendant LMHS conditioned emergency room medical screening and/or treatment to the Plaintiff and the Class on their ability to pay or financial guarantees to pay for such medical care in violation of 26 U.S.C. §501(c)(3) and 42 U.S.C. §1395 dd;
- (i) whether Defendant LMHS should have utilized its sizable financial resources to provide a greater amount of mutually affordable medical care to the Plaintiff and the Class pursuant to its charitable, nonprofit, tax exempt status;
- (j) whether Defendant LMHS has utilized aggressive, unfair, abusive, and harassing collection practices, lawsuits, liens, and garnishments to collect medical payments from the Plaintiff and the Class in violation of its charitable, nonprofit, tax exempt status;
- (k) whether Defendant LMHS violated the anti-inurement provision of 26 U.S.C. §501(c)(3) by providing substantial discounts in medical care to its Board of Directors; the Board of Directors of the hospitals comprising the LMHS system; and entities connected to its Board of Directors;
- (l) whether Defendant LMHS failed to operate exclusively for charitable purposes by allowing noncharitable for-profit entities to derive a profit from its use of its' tax-exempt hospitals in violation of 26 U.S.C. §501(c)(3) and Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3;
- (m) whether Defendant LMHS breached its duty of good faith and fair dealing to the Plaintiff and the Class;

- (n) whether a charitable trust was created for the benefit of the Plaintiff and the Class;
- (o) whether the Defendant LMHS' actions as alleged in the Complaint violated the Florida Deceptive and Unfair Trade Practices Act;
- (p) whether Defendant LMHS has been unjustly enriched at the Plaintiff's and the Class' expense;
- (q) whether Defendant AHA conspired with Defendant LMHS to breach its contracts with the United States Government and State of Florida;
- (r) whether Defendant AHA aided and abetted Defendant LMHS in breaching its contracts with the United States Government and the State of Florida;
- (s) whether Defendant LMHS should be enjoined from continuing its unfair, discriminatory, and abusive conduct; and
- (t) whether DefendantS are liable to the Plaintiff and the Class in this action, as alleged in the Complaint.

33. All common questions are able to be resolved through the same factual occurrences as specifically and/or generally alleged herein.

34. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has no claims antagonistic to those of the Class. Plaintiff has retained competent and experienced counsel in complex class actions, and mass tort and products liability litigation. Counsel is committed to the vigorous prosecution of this action.

35. The prosecution of separate actions by the Plaintiff and individual members of the Class against the DefendantS would create a risk of inconsistent or varying adjudications on the common issues of law and fact related to this action.

36. A Class Action is superior to all other available methods for the fair and efficient adjudication of this controversy.

37. The expense and burden of litigation would substantially impair the ability of the Class Members to pursue individual cases in order to initiate their rights. In the absence of a class action, Defendant LMHS will retain the benefits of its wrongdoing.

38. Class Certification pursuant to Rule 23(b)(3) is appropriate because the common issues of fact and law alleged herein are common to the Class and predominate over any questions affecting only individual members, thereby rendering the class action superior to all other available methods for the fair and efficient adjudication of this controversy.

39. Class Certification is also appropriate pursuant to Rule 23(b)(2) because, as set forth, Defendants have acted and/or refused to act on grounds generally applicable to the Plaintiff and the Class, thereby warranting appropriate injunctive and/or declaratory relief.

**VII.**  
**CAUSES OF ACTION**

**COUNT ONE**  
**THIRD PARTY BREACH OF CONTRACT**

40. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in paragraphs 1 through 39 of the Complaint.

41. Defendant LMHS, as a purported charitable entity under 26 U.S.C. §501(c)(3), entered into an express and/or implied Agreement with the United States Government pursuant to

§501(c)(3) that in return for a substantial federal income tax exemption valued in the millions of dollars it would: operate exclusively for charitable purposes; provide emergency room medical care to the Plaintiff and the Class without regard to their ability to pay for such medical care; provide mutually affordable medical care to the Plaintiff and the Class; not pursue outstanding medical debt from the Plaintiff and the Class by engaging in aggressive, abusive, and humiliating collection practices; and not provide financial inurement to private individuals or entities.

42. Defendant LMHS, as a purported institution of public charity under Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3, also entered into express and/or implied Agreements with the State of Florida, pursuant to Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3, that in return for substantial state income, property, and sales tax exemptions valued in the millions of dollars, it would: operate actually and exclusively for charitable purposes; provide emergency room medical care to the Plaintiff and the Class without regard to their ability to pay for such medical care; provide mutually affordable medical care to the Plaintiff and the Class; not to pursue outstanding medical debt from the Plaintiff and the Class by engaging in aggressive, abusive, and humiliating collection practices; and not provide financial inurement to private individuals and entities.

43. The Plaintiff and the Class are the express and/or implied intended third party beneficiaries of Defendant's Agreements with the United States Government and the State of Florida.

44. Defendant LMHS breached the above-mentioned Agreements with the United States Government and the State of Florida by: failing to provide emergency room medical care to the Plaintiff and the Class without regard to their ability to pay for such medical care; charging the

Plaintiff and the Class the highest and full undiscounted cost of medical care; charging the Plaintiff and the Class significantly more than its insured patients for the same medical services; failing to use its net assets and revenues in the hundreds of millions of dollars to provide mutually affordable medical care to the Plaintiff and the Class; utilizing aggressive, abusive and humiliating collection practices such as lawsuits, liens, and garnishments to collect such inflated and unreasonable medical debt from the Plaintiff and the Class; allowing noncharitable for-profit entities to derive a profit from use of its tax-exempt hospitals; and upon information and belief, providing substantial discounts off the gross charges to its Board of Directors, to the Board of Directors of the hospitals comprising the LMHS system, and to entities connected to its Board of Directors. As a result of such conduct, the Plaintiff and the Class have not received the benefit of Defendant's agreements with the United States Government and the State of Florida. Such conduct is also contrary to the Defendant's purported charitable purpose and its nonprofit status.

45. The aforementioned breaches of contract have proximately caused the Plaintiff and the Class economic injury and other damages.

**COUNT TWO**  
**BREACH OF CONTRACT**

46. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 45 of the Complaint.

47. Alternatively, upon admission, the Plaintiff and the Class entered into express form contracts with Defendant LMHS whereby the Plaintiff and the Class were required to agree to pay unspecified and undocumented charges for medical care set by LMHS in its sole discretion. Imputed in these contracts is the express and/or implied contractual obligation by Defendant LMHS that it

would charge the Plaintiff and the Class no more than a fair and reasonable charge for such medical care.

48. Similarly, by accepting and admitting the Plaintiff and the Class into its hospitals for medical care, Defendant LMHS undertook an express and/or implied contractual obligation to charge the Plaintiff and the Class no more than a fair and reasonable charge for such medical care.

49. Defendant LMHS breached its contractual obligations under these form contracts by charging the Plaintiff and the Class the highest and full undiscounted cost for medical care. These charges are unfair, unreasonable, and bear no relation to the actual cost of providing such services.

50. The aforementioned breaches of contract have proximately caused the Plaintiff and the Class economic injury and other damages.

**COUNT THREE**  
**BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

51. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in paragraphs 1 through 50 of the Complaint.

52. Defendant LMHS' conduct as alleged above, also constitutes a breach of its duty of good faith and fair dealing.

53. The Plaintiff and the Class are express and/or implied intended third party beneficiaries of Agreements between the United States Government and the State of Florida, wherein Defendant LMHS agreed to provide mutually affordable medical care to the Plaintiff and the Class in return for substantial federal, state, and local tax exemptions.

54. Alternatively, the Plaintiff and the Class entered into an express and/or implied contractual relationship with Defendant LMHS wherein each Plaintiff and Class member was admitted to LMHS' hospitals for the purpose of receiving medical care.

55. Defendant LMHS breached its duty of good faith and fair dealing to the Plaintiff and the Class by: failing to provide emergency room medical care to the Plaintiff and the Class without regard to their ability to pay for such care; charging the Plaintiff and the Class the highest and full undiscounted cost of medical care; charging the Plaintiff and the Class a higher amount for medical services than it charged its insured patients for the same services; charging the Plaintiff and the Class unreasonable charges for medical care; utilizing aggressive, abusive, and harassing collection practices such as collection lawsuits, liens, and garnishments to collect such outstanding grossly inflated medical debt from the Plaintiff and the Class; allowing noncharitable for-profit entities to derive a profit from use of its tax-exempt hospitals; and upon information and belief, providing substantial discounts off the gross charges to its Board of Directors, to the Board of Directors of the hospitals comprising the LMHS system, and entities connected to the Board of Directors.

56. Such unfair and bad faith conduct by Defendant LMHS proximately caused economic injury and other damages to the Plaintiff and the Class.

**COUNT FOUR**  
**BREACH OF CHARITABLE TRUST**

57. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in paragraphs 1 through 56 of the Complaint.

58. By accepting federal, state and local tax exemptions under 26 U.S.C. §501(c)(3) and

Fla. Stat. §§196.192, 196.197, 199.183 and Fla. Const. Art. VII, § 3, Defendant LMHS created and entered into a public charitable trust to provide mutually affordable medical care to its' uninsured patients.

59. The Plaintiff and the Class are the intended beneficiaries of this charitable trust created by virtue of Defendant LMHS' acceptance of federal, state and local tax exemptions.

60. Defendant LMHS has breached its' charitable trust obligations to the Plaintiff and the Class by: failing to provide emergency room medical care to the Plaintiff and the Class without regard to their ability to pay for such medical care; charging the Plaintiff and the Class the highest and full undiscounted cost of medical care; charging the Plaintiff and the Class significantly more than its insured patients for the same medical services; failing to use its net assets and revenues in the billions of dollars to provide mutually affordable medical care to the Plaintiff and the Class; utilizing aggressive, abusive and humiliating collection practices such as lawsuits, liens, and garnishments to collect such inflated and unreasonable medical debt from the Plaintiff and the Class; allowing noncharitable for-profit entities to derive a profit from use of its tax-exempt hospitals; and upon information and belief, providing substantial discounts off the gross charges to its Board of Directors, to the Board of Directors of the hospitals comprising the LMHS system, and entities connected to its Board of Directors. As a result of such conduct, the Plaintiff and the Class have not received the benefit of the charitable trust created for their benefit.

61. The aforementioned breaches of charitable trust have caused the Plaintiff and the Class economic injury and other damages.

**COUNT FIVE**  
**VIOLATIONS OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

62. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in paragraphs 1 through 61 of the Complaint.

63. The Florida Deceptive and Unfair Trade Practices Act, § 501.201 et seq., was enacted to prohibit and protect Florida citizens from deceptive, fraudulent and unfair conduct.

64. As alleged above, Defendant LMHS' conduct in charging the Plaintiff and the Class the highest and full uncompensated cost for medical care and charging the Plaintiff and the Class a higher amount than its insured patients for the same medical services, despite its charitable, nonprofit, tax exempt status, is in violation of the Florida Deceptive and Unfair Trade Practices Act because it is unfair, discriminatory, unconscionable, unethical, immoral, and oppressive. Such conduct is against public policy and has caused substantial economic injury to the Plaintiff and the Class.

65. Moreover, as alleged above, Defendant LMHS' aggressive, abusive, and harassing efforts to collect such inflated, undiscounted and uncompensated medical debt from the Plaintiff and the Class through collection lawsuits, liens and garnishments, despite its charitable, nonprofit, tax exempt status, is unfair, discriminatory, unethical, immoral, and oppressive. Such conduct is also against public policy and has caused substantial economic injury to the Plaintiff and the Class, including but not limited to bankruptcy and/or financial ruin.

66. The Defendant LMHS has knowingly induced Plaintiff and the Class to use its facilities under the belief that LMHS would operate its facilities as charity providers of health care for the uninsured. In doing so, LMHS has knowingly made false representations in order to attract consumers.

67. These false representations have been made in the course of LMHS' business.

68. These false representations, as alleged above, have significantly impacted the public as both actual and potential consumers of Defendant LMHS' services.

69. These false representations have caused the Plaintiff and the Class to suffer injuries in fact to a legally protected interest resulting in economic injuries and other damages.

#### **COUNT SIX**

#### **VIOLATIONS OF THE EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT**

70. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in paragraphs 1 through 69 of the Complaint.

71. Under the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. §1395 dd, a "participating hospital" must provide a medical screening examination to any individual that comes into its emergency room for an "emergency medical condition" in order to determine whether such emergency medical condition exists. If such an "emergency medical condition" does in fact exist, the "participating hospital" must provide sufficient medical examination and/or treatment necessary to stabilize the condition. The express intent of the EMTALA is to prohibit hospitals from denying or delaying emergency medical treatment to patients without medical insurance because of their uninsured status.

72. Defendant Lee Memorial Hospital in Cape Coral, Florida and the other hospitals comprising the LMHS system are "participating hospitals" as defined in 42 U.S.C. §1395 cc and §1395 dd.

73. Upon information and belief, before Defendant LMHS would provide emergency medical screening and/or treatment for "emergency medical conditions" to the Plaintiff and the Class, it first analyzed their ability to pay for such medical care and required the Plaintiff and the

Class to sign form contracts agreeing to pay LMHS in full for unspecified and undiscounted medical charges. Defendant LMHS would not provide emergency medical screening and/or treatment to the Plaintiff and the Class unless they were able to pay for such medical care or until they agreed to sign a form contract guaranteeing payment in full for some medical care. By conditioning medical screening and/or treatment for “emergency medical conditions” on the Plaintiff’s and the Class’ ability to pay and financial guarantees, and refusing to provide emergency medical screening and/or treatment until such guarantees were given, Defendant LMHS violated the EMTALA, 42 U.S.C. §1395 dd. Such conduct in failing to provide emergency room medical care to the Plaintiff and the Class without regard to their ability to pay for such medical care is also in violation of 26 U.S.C. §501(c)(3).

74. Such violations of 42 U.S.C. §1395 dd have proximately caused the Plaintiff and the Class economic injury and other damages.

**COUNT SEVEN**  
**UNJUST ENRICHMENT/CONSTRUCTIVE TRUST**

75. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in paragraphs 1 through 74 of the Complaint.

76. Defendant LMHS has been unjustly enriched at the Plaintiff’s and the Class’ expense. As alleged above, Defendant LMHS has failed to provide mutually affordable medical care to the Plaintiff and the Class despite receiving millions of dollars in federal, state, and local tax exemptions for such purpose. Moreover, contrary to their charitable, nonprofit, tax exempt status, LMHS has failed to utilize its substantial net assets and revenues, valued in the hundreds of millions of dollars, to provide mutually affordable medical care to the Plaintiff and the Class. Defendant LMHS has also realized profits in the millions of dollars by charging the Plaintiff and the Class the highest and full

undiscounted cost for medical care and by charging the Plaintiff and the Class a higher amount for medical care than its insured patients.

77. The Plaintiff and the Class have suffered severe economic injury and other damages as a proximate consequence of Defendant LMHS' unjust enrichment.

78. As a result of Defendant LMHS' breach of contract along with their wrongful, unfair, discriminatory, abusive, and noncharitable conduct, Defendant is in possession of tax savings, profits and other assets that in good conscience and equity it should not be entitled to retain. The Plaintiff and the Class are therefore entitled to all damages resulting from Defendant's unjust enrichment, including but not limited to, the imposition of a constructive trust in the amount of Defendant's federal, state and local tax exemption savings. The Plaintiff and the Class are also entitled to the imposition of a constructive trust on all profits LMHS wrongfully obtained by charging the Plaintiff and the Class the highest and full undiscounted cost of medical care. The Plaintiff and the Class are further entitled to the imposition of a constructive trust on the difference between the amount Defendant has charged the Plaintiff and the Class and the amount it has charged its insured patients. Lastly, the Plaintiff and the Class are, therefore, entitled to the imposition of a constructive trust on Defendant's net assets and revenues in an amount sufficient to provide to the Plaintiff and the Class mutually affordable medical care pursuant to its charitable, nonprofit, tax exempt status.

**COUNT EIGHT**  
**CIVIL CONSPIRACY/CONCERT OF ACTION**

79. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in paragraphs 1 through 78 of the Complaint.

80. Defendant AHA advised LMHS and its nonprofit hospital members on its billing and collection practices concerning the uninsured through various internal memos and/or “white papers” for the purpose of increasing LMHS profits and government reimbursements. In these internal memos, such as the December 17, 2003, memo entitled “Federal Regulations Hamper Hospitals Efforts to Assist Patients of Limited Means,” the AHA advised LMHS and its member nonprofit hospitals that they were prevented from providing discounts to the Plaintiffs and the Class and were required to subject Plaintiffs and the Class to abusive collection practices. The AHA, through these internal memos, conspired and acted in concert with LMHS to charge the Plaintiffs and the Class the highest undiscounted cost for medical care and aggressively collect such inflated medical debt through abusive lawsuits, liens and garnishments.

81. Moreover, the AHA actively conspired and acted in concert with LMHS to wrongfully retain its tax exempt status and breach LMHS’ contracts with the United States Government, State of Florida, and other local governmental bodies, the Plaintiffs and the Class by: advising LMHS that it charge and collect undiscounted rates for medical care from the Plaintiffs and the Class; falsely representing to Secretary Thompson that LMHS was required to charge and collect undiscounted rates for medical care from the Plaintiffs and the Class; and concealing and misrepresenting the true amount of charity care LMHS provided to the Plaintiffs and the Class.

82. Through such acts, the AHA also conspired and acted in concert with LMHS to violate the Florida Deceptive and Unfair Trade Practices Act and to breach LMHS’ duty of good faith and fair dealing to the Plaintiffs and the Class.

83. Such advice, assistance, false justification, concealments and misrepresentations have allowed and enabled LMHS to: fail to provide emergency room medical care to the Plaintiffs and

the Class without regard for their ability to pay for such medical care; charge the Plaintiffs and the Class the highest and full undiscounted cost of medical care; fail to provide mutually affordable medical care to the Plaintiff and the Class; charge the Plaintiffs and the Class substantially more than its insured patients for the same medical services; fail to use its net assets and reserves in the hundreds of millions of dollars to provide mutually affordable health care to the Plaintiffs and the Class; and engage in aggressive, abusive, and harassing collection practices such as lawsuits, liens, and garnishments to collect such inflated and unreasonable medical debt from the Plaintiffs and the Class.

84. Such acts of conspiracy and concert in action by the AHA have proximately caused LMHS to be unjustly enriched at the Plaintiffs' and Class' expense and have also proximately caused the Plaintiffs and the Class economic injury and other damages.

**COUNT NINE**  
**AIDING AND ABETTING**

85. Plaintiffs hereby incorporate and adopt by reference each and every allegation set forth in paragraphs 1 through 84 of the Complaint.

86. Defendant AHA, through its internal memos and other advisory assistance, aided and abetted LMHS in charging the Plaintiffs and the Class the full undiscounted cost for medical care and in seeking to collect such grossly inflated medical debt from the Plaintiffs and the Class through abusive collection lawsuits, liens and garnishments.

87. The AHA aided and abetted LMHS' breach of its tax exempt contracts with the United States Government, State of Florida, other local governmental bodies, the Plaintiffs and the Class by advising LMHS that federal regulations prevented it from providing discounts to the

Plaintiffs and the Class and required it to aggressively collect such grossly inflated medical debt from the Plaintiffs and the Class through collection lawsuits, liens and garnishments.

88. The AHA also aided and abetted LMHS' breaches of contract by falsely justifying and representing to Secretary Thompson and other government entities that the Medicare regulations prevented LMHS from providing discounts to the Plaintiffs and the Class and required LMHS to aggressively collect such grossly inflated medical debt from the Plaintiffs and the Class through collection lawsuits, liens and garnishments.

99. Defendant AHA further aided and abetted LMHS' breaches of contract by falsely representing and concealing the true cost of charity care provided by LMHS to the Plaintiffs and the Class.

90. Through these acts, the AHA also aided and abetted LMHS' violations of the Florida Deceptive and Unfair Trade Practices Act and LMHS' breach of its duty of good faith and fair dealing toward the Plaintiffs and the Class.

91. Such substantial assistance by the AHA allowed and enabled LMHS to: fail to provide emergency room medical care to the Plaintiffs and the Class without regard for their ability to pay for such medical care; charge the Plaintiffs and the Class the highest and full undiscounted cost of medical care; fail to provide mutually affordable medical care to the Plaintiffs and the Class; charge the Plaintiffs and the Class substantially more than its insured patients for the same medical services; fail to use its net assets and revenues in the hundreds of millions of dollars to provide mutually affordable health care to the Plaintiffs and the Class; and engage in aggressive, abusive, and harassing collection practices such as lawsuits, liens, and garnishments to collect such inflated and unreasonable medical debt from the Plaintiffs and the Class.

92. Defendant AHA's substantial assistance has proximately caused LMHS to be unjustly enriched at the Plaintiffs' and Class' expense and has also proximately caused the Plaintiffs and the Class economic injury and other damages.

**COUNT TEN**  
**INJUNCTIVE/DECLARATORY RELIEF**

93. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in paragraphs 1 through 92 of the Complaint.

94. As a result of Defendant LMHS' wrongful, unfair, discriminatory, and unconscionable charging and collection practices, and AHA's aiding and abetting and conspiratorial practices, Plaintiff and the Class have suffered and, unless abated, will continue to suffer severe and irreparable harm and injury.

95. Accordingly, Plaintiff and the Class respectfully request that this Court enter a preliminary and/or permanent injunction, in accordance with FRCP 23(b)(2), ordering Defendant LMHS to cease and desist: charging the Plaintiff and the Class the highest and full undiscounted cost of medical care; charging the Plaintiff and the Class a higher amount for medical services than its insured patients for the same services; and utilizing aggressive, abusive, and harassing collection practices such as collection lawsuits, liens, and garnishments to collect outstanding grossly inflated medical debt from the Plaintiff and the Class.

96. Plaintiff and the Class also seek a prospective Order from the Court, in accordance with FRCP 26(b)(2), requiring Defendant LMHS: to provide mutually affordable medical care to the Plaintiff and the Class; to charge the Plaintiff and the Class no more for medical services than it charges their insured patients, and to cease their attempts to collect outstanding medical debt from the Plaintiff and the Class until they have complied with a 180-day waiting period and attempted in

good faith to settle such outstanding debt with the Plaintiff and the Class through a graduated payment plan or other means.

### **VIII.** **DAMAGES**

97. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in paragraphs 1 through 96 of the Complaint.

98. As a direct and proximate result of LMHS' breach of contract, breach of duty of good faith and fair dealing, violations of EMTALA, conspiracy and unjust enrichment, and Defendant AHA's aiding and abetting and conspiratorial actions, the Plaintiff and the Class have suffered economic injury and damages.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that upon a trial of this action, judgment will be entered against Defendants LMHS and AHA for:

- 1) all economic, monetary, actual, consequential, and compensatory damages caused by the conduct of Defendant LMHS and AHA;
- 2) a constructive trust to be imposed on: Defendant's federal, state and local tax exempt savings; LMHS' profits obtained from charging the Plaintiff and the Class the highest and full undiscounted cost for medical care; and LMHS' net assets and revenues in an amount sufficient to provide the Plaintiff and the class mutually affordable medical care; and
- 3) injunctive and/or declaratory relief.

Respectfully submitted, this the 22<sup>nd</sup> day of July, 2004.

s/ E. Kirk Wood

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**JURY DEMAND**

***THE PLAINTIFF DEMANDS TRIAL BY STRUCK JURY ON ALL ISSUES  
HEREIN.***

s/ E. Kirk Wood  
Of Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that on July 22, 2004, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system. I certify that I mailed the foregoing pleading and the notice of electronic filing by first class mail, postage prepaid to Defendant Lee Memorial Hospital System. I further certify that I mailed the foregoing pleading and notice of electronic filing by Certified Mail to Defendant American Hospital Association. The foregoing pleadings were mailed to Defendants at the following addresses:

**Lee Memorial Hospital System**  
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Fort Myers, Florida 33902

**American Hospital Association**  
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